

Jeffrey N. Pomerantz (State Bar No. 143717)
Jeffrey W. Dulberg (State Bar No. 181200)
John W. Lucas (State Bar No. 271038)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067-4003
Telephone: 310.277.6910
Facsimile: 310.201.0760
E-mail: jpomerantz@pszjlaw.com
jdulberg@pszjlaw.com
jlucas@pszjlaw.com

[Proposed] Counsel to Bradley D. Sharp,
Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

LESLIE KLEIN,

Debtor.

Case No.: 2:23-bk-10990-SK

Chapter 11

**CHAPTER 11 TRUSTEE'S
OBJECTION TO MOTION IN
INDIVIDUAL CHAPTER 11 CASE
FOR ORDER AUTHORIZING USE OF
CASH COLLATERAL 11 U.S.C. § 363**

Date: June 28, 2023
Time: 9:00 am
Courtroom: 1575
Location: 255 E. Temple Street
Los Angeles, CA 90012

Judge: Hon. Sandra R. Klein

Bradley D. Sharp ("**Trustee**"), the duly appointed trustee for the chapter 11 estate of Leslie Klein (the "**Debtor**"), hereby files his objection (the "**Objection**") to the *Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral 11 U.S.C. § 363* [Docket No. 134] (the "**Motion**"). In support of the Objection, the Trustee respectfully represents as follows:

1 **A. Background**

2 The Debtor commenced a voluntary chapter 11 case on February 22, 2023. On March 10,
3 2023, the Office of the United States Trustee (the “**UST**”) filed a statement regarding the Debtor’s
4 failure to comply with various requirements under the Bankruptcy Code, Bankruptcy Rules, and
5 certain notices and guidelines promulgated by the UST. *See* [Docket No. 42].

6 On May 16, 2023, the Debtor filed the Motion seeking authorization to use cash collateral
7 from the rents or other accounts receivable relating to a certain real properties located at:

- 8 • 315 N. Martel Avenue, Los Angeles, CA 90036 from May 2023 through August 2023
9 consistent with the terms set forth on the budget annexed to the Motion. The Debtor
10 asserts that the value of the collateral is \$2,500,000, that \$5,500.00 is generated
11 monthly from certain rental payments, and that the lien holder is Wilmington Savings
12 Fund Society, FSB.
- 13 • 143 S. Highland Drive, Los, Angeles, CA 90036 from May 2023 through August
14 2023 consistent with the terms set forth on the budget annexed to the Motion. The
15 Debtor asserts that the value of the collateral is \$2,200,000, that \$4,000.00 is
16 generated monthly from certain rental payments, and that the lien holder is J.P.
17 Morgan Acquisition Corp.
- 18 • 161 N. Poinsettia Place, Los Angeles, CA 90036 from May 2023 through August
19 2023 consistent with the terms set forth on the budget annexed to the Motion. The
20 Debtor asserts that the value of the collateral is \$2,000,000, that \$3,000.00 is
21 generally monthly from certain rental payments, and that the lien holder is Ajax
22 Mortgage Loan Trust 2021-D, By US Bank National Assoc.

23 On May 17, 2023, in response to certain motions to dismiss the Debtor’s chapter 11 case, the
24 Court entered an order directing the UST to appoint a chapter 11 trustee. *See* [Docket No. 142]. On
25 May 23, 2023, the UST filed a notice appointing Bradley D. Sharp (the “**Trustee**”) as the chapter 11
26 trustee of the Debtor’s chapter 11 case. *See* [Docket No. 151]. On May 24, 2023, the UST filed an
27 application for an order approving the appointment of Mr. Sharp as the Trustee. *See* [Docket No.
28 154]. On May 24, 2023, the Court entered an order approving the appointment of Mr. Sharp as the
Trustee. *See* [Docket No. 155]. On May 24, 2023, Mr. Sharp accepted his appointment as Trustee.
See [Docket No. 156].

**B. The Appointment of a Chapter 11 Trustee
Divests the Debtor of any Control over Property of the Estate**

Under chapter 11 of the Bankruptcy Code, a debtor remains the debtor in possession unless and until a trustee is appointed by court order under section 1104 of the Bankruptcy Code. The appointment of a chapter 11 trustee pursuant to 11 U.S.C. § 1104 terminates the debtor in possession's trustee-like authority under 11 U.S.C. § 1107. The appointed chapter 11 trustee then assumes the duties expressed in 11 U.S.C. § 1106, including most of the duties specified in 11 U.S.C. § 704. *In re McCorhill Pub., Inc.*, 89 B.R. 393, 396 (Bankr. S.D.N.Y. 1988).

Upon his or her appointment, the trustee succeeds to all the rights and properties of the debtor, who is thereby displaced from his or her property interests. The appointment of a trustee effects a statutory transfer or assignment of the debtor's property, including its contractual relationships, from the debtor to the trustee. *See* 11 U.S.C. § 323(a) ("The trustee in a case under this title is the representative of the estate."); *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352-53 (1985) ("Congress contemplated that when a trustee is appointed, he assumes control of the business, and the debtor's directors are completely ousted.") (quoting H.R. REP. No. 95-595, pp. 220-21 (1977)).

Where a chapter 11 trustee has been appointed, either for cause or in the interests of creditors, the duties and obligations set forth in section 1107 of the Bankruptcy Code are transferred to the trustee, in addition to the statutory duties set out in section 1106 of the Bankruptcy Code. As a result, a chapter 11 trustee stands in the shoes of the debtor and thereafter performs the fiduciary debtor-in-possession duties. *United States v. One 2009 Maserati Granturismo*, 2016 U.S. Dist. LEXIS 119383, 2016 WL 4502457, at *1 (C.D. Cal. June 6, 2016).

"Cash collateral," as such terms is defined under section 363 of the Bankruptcy Code, is property of a debtor's estate. *In re McClure*, 2023 Bankr. LEXIS 796, *21 (Bankr. C.D. Cal. Mar. 29, 2023).

C. The Motion Should be Withdrawn or Denied

The Motion should be withdrawn or denied because the Debtor is no longer in possession of his estate upon Mr. Sharp's appointment as the Trustee of the Debtor's chapter 11 case and his

1 bankruptcy estate. The Trustee began collecting the above-described rents and will continue to hold
2 and preserve all cash collected with respect to the above-described properties (and any other cash
3 that is property of the estate or comes into the estate) so that such property can be administered in
4 accordance with the requirements set forth in the Bankruptcy Code and the Bankruptcy Rules.

5 The Trustee reserves all of the estate's rights with respect to the validity and enforceability of
6 the secured claims asserted against the subject properties and the rents derived therefrom as such
7 claims are described above and in the Motion.

8 **D. Conclusion**

9 For the reasons stated herein and at the hearing, the Trustee respectfully requests the Court to
10 deny the Motion.

11 Dated: June 12, 2023

PACHULSKI STANG ZIEHL & JONES LLP

12 By /s/ Jeffrey W. Dulberg

13 Jeffrey N. Pomerantz

14 Jeffrey W. Dulberg

John W. Lucas

15 [Proposed] Counsel to Bradley D. Sharp,
16 Chapter 11 Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 11 TRUSTEE'S OBJECTION TO MOTION IN INDIVIDUAL CHAPTER 11 CASE FOR ORDER AUTHORIZING USE OF CASH COLLATERAL 11 U.S.C. § 363** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **June 12, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **June 12, 2023**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

June 12, 2023
Date

Nancy H. Brown
Printed Name

/s/ Nancy H. Brown
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- **Reem J Bello** rbello@goeforlaw.com, kmurphy@goeforlaw.com
- **Michael Jay Berger** michael.berger@bankruptcypower.com, yathida.nipha@bankruptcypower.com; michael.berger@ecf.inforuptcy.com
- **Greg P Campbell** ch11ecf@aldridgepite.com, gc@ecf.inforuptcy.com; gcampbell@aldridgepite.com
- **Baruch C Cohen** bcc@BaruchCohenEsq.com, paralegal@baruchcohenesq.com
- **Theron S Covey** tcovey@raslg.com, sferry@raslg.com
- **Jeffrey W Dulberg** jdulberg@pszjlaw.com
- **Dane W Exnowski** dane.exnowski@mccalla.com, bk.ca@mccalla.com, mccallaecf@ecf.courtdrive.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com
- **Michael I. Gottfried** mgottfried@elkinskalt.com, cavila@elkinskalt.com, lwageman@elkinskalt.com, docketing@elkinskalt.com
- **Brandon J Iskander** biskander@goeforlaw.com, kmurphy@goeforlaw.com
- **John W Lucas** jlucas@pszjlaw.com, ocarpio@pszjlaw.com
- **Ron Maroko** ron.maroko@usdoj.gov
- **Steven M Mayer** smayer@mayerlawla.com
- **Krikor J Meshefjian** kjm@lnbyg.com
- **Kenneth Miskin** Kenneth.M.Miskin@usdoj.gov
- **Jeffrey P Nolan** jnolan@pszjlaw.com
- **Jeffrey N Pomerantz** jpomerantz@pszjlaw.com
- **Brian A Procel** bprocel@millerbarondess.com, rdankwa@millerbarondess.com; docket@millerbarondess.com
- **Joshua L Scheer** jscheer@scheerlawgroup.com, jscheer@ecf.courtdrive.com
- **Mark M Sharf (TR)** mark@sharfllaw.com, C188@ecfcbis.com; sharf1000@gmail.com; 2180473420@filings.docketbird.com
- **Bradley D. Sharp (TR)** bsharp@dsi.biz
- **Nikko Salvatore Stevens** nikko@cym.law
- **Alan G Tippie** Alan.Tippie@gmlaw.com, atippie@ecf.courtdrive.com; Karen.Files@gmlaw.com, patricia.dillamar@gmlaw.com, denise.walker@gmlaw.com
- **Gary Tokumori** gtokumori@pmcos.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov
- **Michael L Wachtell** mwachtell@buchalter.com
- **John P. Ward** jward@attleseystorm.com, ezhang@attleseystorm.com
- **Alex M Weingarten** aweingarten@willkie.com, lcarter@willkie.com
- **Clarisse Young** youngshumaker@smcounsel.com, levern@smcounsel.com
- **Paul P Young** paul@cym.law, jaclyn@cym.law
- **Roye Zur** rzur@elkinskalt.com, cavila@elkinskalt.com; lwageman@elkinskalt.com; 1648609420@filings.docketbird.com

2. SERVED BY UNITED STATES MAIL:

Peter C. Anderson, U.S. Trustee
Michael Jones, Assistant U.S. Trustee
Office of the U.S. Trustee
915 Wilshire Boulevard, Suite 1850
Los Angeles, CA 90017

Nikko S. Stevens
CHORA YOUNG & MANASSERIAN LLP
650 Sierra Madre Villa Ave., Ste. 304
Pasadena, CA 91107

Joshua L. Scheer
Scheer Law Group, LLP
85 Argonaut, Suite 202
Aliso Viejo, CA 92656